IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3113 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARGAV MANUBHAI GADHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3113 of 2003

MR NV ANJARIA for Petitioner Nos. 1-3

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P. for Respondents Nos. 1,3

MR DP JOSHI for Respondent No. 2

MR YS MANKAD for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 21/07/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned A.G.P. Ms Maithili Mehta for respondents nos. 1 and 3, by learned advocate Shri D.P. Joshi for respondent no. 2 and by learned advocate Shri Y.S. Mankad for respondent no.4. At the request of the learned advocates and looking to the facts of the case, the petition is finally heard today.

2. In this petition, the petitioners have prayed that Town Planning Scheme No. 3 made for the city of Bhuj be declared illegal and bad in law as the petitioners' property situated at City Survey Nos. 2881 and 2882 have been affected because of the said scheme, though the land, where the petitioners' property is situated, is not within the limits of Town Planning Scheme No. 3.

3. Learned advocate Shri Anjaria appearing for the petitioners has submitted that the petitioners are owners of land bearing Survey Nos. 2881 and 2882 which, upon making of the town planning scheme, have been given original plots nos. 1091 and 1092. In lieu of the said original plots, the petitioners are allotted Final Plot Nos. 695 and 698, respectively.

4. It is the case of the petitioners that the land occupied by the petitioners is outside the walled city of Bhuj. It is their case that the scheme has been made for the city of Bhuj and not for the area, which is outside the fort wall of Bhuj. According to them, if the land belonging to the petitioners is not within the limit of the scheme, the respondent authorities do not have any right to take possession of the land belonging to the petitioners. According to their submission, in spite of the aforestated position, the petitioners are to be dispossessed of their land bearing Survey Nos. 2881 and 2882 and in lieu thereof, they are to be given Final Plots Nos. 695 and 698.

5. It has been thereafter submitted by the learned advocate that out of the original plots belonging to the petitioners Final Plots have been reconstituted and allotted to Shri Bhogilal Chandulal Parekh, a builder, to oblige him.

6. On the other hand, it has been submitted by the learned advocates appearing for the respondents that the averments in the petition and the submissions made by learned advocate Shri Anjaria are not correct because the land belonging to the petitioners is included in Town

Planning Scheme No. 3. My attention has been drawn by the learned advocates appearing for the State to the notification issued by the State of Gujarat giving details of the area covered under Town Planning Scheme No. 3. The said notification was issued on 8th April, 2002 and has been annexed to the affidavit-in reply filed on behalf of respondent no.2. Upon perusal of the said notification, it is clear that the submission made by the petitioners that the area, which is not within the fort wall of Bhuj is not included in Town Planning Scheme No. 3 is not correct. Upon perusal of the boundaries referred to in the aforestated notification, it is clear that the area, which is even outside the fort wall of Bhuj has been included. It has been stated in the said notification that the area up to all existing roads, which are on south and east side of the city of Bhuj, have been included in the scheme.

7. Learned advocate Shri D.P. Joshi has drawn my attention to the minutes recorded by respondent no. 2 of the meeting convened on 21st March, 2002. In the said meeting, details with regard to Survey nos incorporated in the town planning scheme had been discussed. Upon perusal of the minutes, which is at Annexure-4 to the affidavit-in reply filed by respondent no. 2, it is clear that the land bearing Survey Nos. 1 to 1060 and 2873 to 3060 have been included in the area covered under Town Planning Scheme No. 3. The petitioners are owners of Survey Nos. 2881 and 2882. As the said Survey nos have been included in Town Planning Scheme No. 3, it has been submitted on behalf of the government authorities, that the land belonging to the petitioners is a part of Town Planning Scheme No. 3.

8. With regard to the allegation that undue favour has been done by the respondent authorities by giving certain Final Plots to the family members of Shri Bhogilal Chandulal Parekh , it has been submitted by learned advocate Shri D.P. Joshi that the said allegation is without any substance. It has been submitted by him that original plots belonging to the petitioners were reconstituted and allotted as Final Plots to Shri Parekh as he and his family had lost their lands because their land was to be used for widening of roads. Thus, it has been submitted that no undue favour has been done to Shri Parekh as alleged or otherwise.

9. Upon hearing the learned advocates and upon noting the aforestated facts, it cannot be disputed that the land belonging to the petitioners have been included in Town Planning Scheme No. 3. As the land in question

has been included in the scheme, it is open to the respondent authorities to reconstitute the plots and allot the plots in accordance with the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"). It is also clear that no undue favour has been done to Shri Parekh by giving original plot belonging to the petitioners to him. The said action is absolutely in accordance with law.

10. No other argument has been advanced by the learned advocate appearing for the petitioners and in view of the fact that the land in question is included in Town Planning Scheme No. 3, the petitioners cannot make any grievance with regard to the actions taken by the respondent authorities as per the provisions of the Act.

11. Finally, learned advocate Shri Anjaria has submitted that even if the petition is rejected, the right of the petitioners to agitate the grievance with regard to quantum of compensation should not be adversely affected. It is clarified that the right of the petitioners to approach an appropriate authority for enhancing compensation would not be adversely affected simply because the petition filed by the petitioners has been rejected.

12. In view of the above facts, I do not find any substance in the petition and, therefore, the petition is rejected. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

13. Learned advocate Shri Anjaria has made a request to continue the ad-interim relief granted earlier in favour of the petitioner for a further period of two weeks. The said request being reasonable, is granted.

(A.R. DAVE, J.)

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